

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID ANGEL SIFUENTES III,

Plaintiff,

v.

LASER ACCESS LLC,

Defendant.

Case No. 1:23-cv-144

HON. JANE M. BECKERING

_____ /

ORDER

Plaintiff, proceeding pro se, initiated this action on February 6, 2023. On February 10, 2023, the Magistrate Judge issued a Report and Recommendation, recommending that the action be dismissed pursuant to 28 U.S.C. § 1915(e)(2) for failure to state a claim. On February 23, 2023, Plaintiff filed an “Objection” which states: “Sifuentes has not objected as he filed a motion to voluntarily dismiss this action” (ECF No. 11). Plaintiff separately moved for voluntary dismissal without prejudice pursuant to FED. R. CIV. P. 41(a)(1)(A)(i) (ECF No. 12). Plaintiff’s objection, which only states that he moves for voluntary dismissal, does not identify any error in the Magistrate Judge’s analysis of Plaintiff’s claims or in the Magistrate Judge’s conclusion that this matter is properly dismissed. Accordingly, the Report and Recommendation is approved and adopted as the Opinion of the Court.

Further, Plaintiff’s motion for voluntary dismissal is denied in light of the Magistrate Judge’s recommendation that the complaint be dismissed on initial review under § 1915(e)(2). *See* FED. R. CIV. P. 41(a)(1)(A) (a plaintiff’s right to dismiss is “[s]ubject to ... any applicable federal

statute”) and 41(a)(2) (“Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.”). Consequently, “Plaintiff cannot avoid the operation of [§ 1915(e)(2)] by stipulating to dismissal of his action after the issuance of the Report and Recommendation.” *Bennett v. Gregory*, No. 3:15-0493, 2016 WL 454781, at *1 (M.D. Tenn. Feb. 5, 2016) (quoting *Edwards v. Coffee Cty. Facility*, No. No. 5:15-cv-34, 2016 WL 320948, at *1 (S.D. Ga. Jan. 26, 2016) and citing cases).

A Judgment will be entered consistent with this Order. *See* FED. R. CIV. P. 58. Last, consistent with the Report and Recommendation and because this action was filed *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Judgment would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610–11 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211–12 (2007). Accordingly:

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 10) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Voluntary Dismissal Without Prejudice (ECF No. 12) is DENIED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: February 27, 2023

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge